IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**Criminal No. 2006-80**
GELEAN MARK,	)	
VERNON FAGAN,	)	
WALTER ELLS,	)	
DORIAN SWAN,	)	
KELVIN MOSES, and	)	
HENRY FREEMAN,	)	
	)	
Defendants.	)	

ATTORNEYS:

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For defendant Kelvin Moses,

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For defendant Henry Freeman.

MEMORANDUM OPINION

GÓMEZ, C.J.

Before the Court are the motions of defendants Walter Ells ("Ells"), Dorian Swan ("Swan"), and Kelvin Moses ("Moses") for judgments of acquittal pursuant to Federal Rule of Criminal Procedure 29 ("Rule 29"). For the reasons stated below, the Court will deny the motions.

I. FACTS

On December 19, 2006, the Grand Jury returned an indictment against the defendants. Count One charges that, from 1999 until October, 2005, Ells, Swan, and Moses (collectively, the "defendants") with conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 846. Count Two charges Ells with participating in a conspiracy to

import cocaine into the United States from Tortola, British Virgin Islands, from 1999 until October, 2005.[1] *Id.* at § 952.

The trial in this matter commenced on September 5, 2007. The parties rested and the matter went to the jury during the fourth week of trial. During the third day of deliberations, the jury indicated that it could not reach a unanimous verdict with respect to Ells, Swan, and Moses on Count One of the indictment. The jury also disclosed that they could not reach a unanimous verdict as to Ells on Count Two. After consulting with counsel, the Court instructed the jury to deliberate further (the "*Allen* charge"), consistent with *Government of the Virgin Islands v. Gereau*, 502 F.2d 914, 935-36 (3d Cir. 1974).

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[1] Count One also charges Gelean Mark ("Mark"), Vernon Fagan ("Fagan"), and Henry Freeman ("Freeman") with conspiracy to possess with intent to distribute cocaine. Count also Two alleges conspiracy to import cocaine against Mark and Fagan. However, neither Mark nor Fagan filed a post-trial motion for a judgment of acquittal. Freeman filed his post-trial Rule 29 motion and motion for a new trial on November 26, 2007, after the expiration of the November 15, 2007, deadline set by the Court for the filing of all post-trial motions. The Court will not consider Freeman's untimely motions. *See Carlisle v. United States,* 517 U.S. 416, 420-21 (1996) ("There is simply no room in the text of Rules 29 and 45(b) for the granting of an untimely postverdict motion for judgment of acquittal, regardless of whether the motion is accompanied by a claim of legal innocence, is filed before sentencing, or was filed late because of attorney error."); *United States v. Gaydos,* 108 F.3d 505, 512 (3d Cir. 1997) (holding that a district court may not consider an untimely motion for a judgment of acquittal or for a new trial).

After approximately two more days of deliberations, the jury informed the Court that it was still unable to reach a unanimous verdict with respect to Ells, Swan, and Moses on Count One. The jury was also unable to reach unanimity on Count Two.

The Court declared a mistrial in this matter as to Ells, Swan, and Moses on Count One, and on Count Two. The Court found that manifest necessity required such a declaration, given the jury's inability to reach a unanimous verdict on those charges.

Ells, Swan, and Moses timely filed post-judgment motions for judgments of acquittal on the conspiracy charges against them, pursuant to Rule 29(c).[2]

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[2] Rule 29(c) provides:

> (1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury, whichever is later.
>
> (2) Ruling on the Motion. If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.
>
> (3) No Prior Motion Required. A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

Fed. R. Crim. P. 29(c) (2005).

II. DISCUSSION

A judgment of acquittal is appropriate if, after reviewing the record in a light most favorable to the prosecution, the Court determines that no rational jury could find proof of guilt beyond a reasonable doubt and the verdict is supported by substantial evidence. *United States v. Bobb*, 471 F.3d 491, 494 (3d Cir. 2006). The government may sustain this burden entirely through circumstantial evidence. *Id.; see also United States v. Wexler*, 838 F.2d 88, 90 (3d Cir. 1988). "It is not [the Court's] role to weigh the evidence or to determine the credibility of the witnesses." *United States v. Cothran*, 286 F.3d 173, 175 (3d Cir. 2002).

III. ANALYSIS

The indictment alleges two different conspiracies: the conspiracy to possess with intent to distribute cocaine alleged in Count One, and the conspiracy to import cocaine alleged in Count Two.

To sustain its burden of proof on a conspiracy charge, the government must show: "(1) a unity of purpose between the alleged conspirators; (2) an intent to achieve a common goal; and (3) an agreement to work together toward that goal." *United States v. Pressler,* 256 F.3d 144, 147 (3d Cir. 2001). The government must prove "that defendant entered into an agreement and knew that the

agreement had the specific unlawful purpose charged in the indictment." *United States v. Idowu*, 157 F.3d 265, 266-67 (3d Cir. 1998); *see also United States v. Cartwright,* 359 F.3d 281, 286-87 (3d Cir. 2004).

The essence of any conspiracy is the agreement. *Pressler,* 256 F.3d at 147. Because agreements to commit crimes are clandestine by nature, direct evidence of criminal conspiracies is rare. *See id.* "The elements of a conspiracy may be proven entirely by circumstantial evidence, but each element of the offense must be proved beyond a reasonable doubt." *United States v. Wexler*, 838 F.2d 88, 90 (3d Cir. 1988). "Inferences from established facts are accepted methods of proof when no direct evidence is available so long as there exists a logical and convincing connection between the facts established and the conclusion inferred." *Idowu,* 157 F.3d at 269 (citation and quotations omitted). For example, a rational jury may find a conspiracy where the alleged co-conspirators: demonstrated a level of mutual trust, referred business to one another in exchange for discounts, frequently met to exchange large sums of money, consulted with each other about drug prices, conducted their business in code, stood on lookout for each other, provided protection to one another, shared packaging materials, shared profits, or acted as debtor or creditor to one another. *See*

Pressler, 256 F.3d at 153-54; *United States v. Gibbs*, 190 F.3d 188, 200-02 (3d Cir. 1999); *United States v. Powell,* 113 F.3d 464, 467 (3d Cir. 1997); *United States v. McGlory,* 968 F.2d 309, 322-28 (3d Cir. 1992).

Viewing the evidence in the light most favorable to the government, the Court must determine whether any rational jury could find beyond a reasonable doubt that the elements of a conspiracy have been satisfied with respect to Ells, Swan, and Moses.

A. Ells

At trial, the government presented the testimony of Glenson Isaac, a member of an organization lead by James Springette ("Springette") that trafficked cocaine from South America through Tortola, British Virgin Islands, and St. Thomas, U.S. Virgin Islands, during the period from 1999 through 2005. Isaac grew up with Ells in St. Thomas. Isaac testified at trial that:

> The drugs was coming from Bob Hodge. Uki was delivering the drugs.

(Trial Tr. 309, Sept. 11, 2007.) Isaac explained that Ells was also known as "Uki," "Ookie," or "Okie." During the trial, the prosecutor asked Isaac:

> Q: And who is Uki, sir?
>
> A: The boat handler.

. . .

Q: And what is his role?

A: Transport the drugs from Tortola to St. Thomas.

Q: And how did he do that?

A: By the vessel.

(*Id.* at 310.)

In May, 2005, Isaac and Mark traveled from St. Thomas to Tortola, British Virgin Islands, on a boat operated by Ells. After docking the vessel at a marina in Tortola, Isaac and Ells ate lunch at a restaurant. During lunch, Ells received a phone call from Mark, who asked to speak to Isaac.[3] Ells passed the phone to Isaac. At trial, the prosecutor asked Isaac about his conversation with Mark.

Q: What did [Mark] discuss with you when he called you?

A: We going be riding dirty, if I'm up for it.

. . .

Q: And what was your understanding of his words, Mr. Mark's words, "We'll be riding dirty"?

A: Smuggling cocaine back to St. Thomas.

Q: And what did you tell him when he asked you that?

A: I told him. "Don't be asking me no silly question."

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[3] At trial, Isaac explained that his cellular phone did not work in the British Virgin Islands.

Q: Why did you say that?

A: I told him I'm game for it.

(Trial Tr. 144, Sept. 11, 2007.)

After lunch, Isaac and Ells met Mark and Hodge at the Marina where they had docked the boat. Ells was present as Hodge handed Mark a black plastic bag, which Mark put on the boat. Isaac stated at trial that he knew the bags contained drugs based on Mark's comment about "riding dirty."

Ells drove the boat back to St. Thomas. They traveled quickly, with the vessel's lights turned off, in order to avoid detection by law enforcement. For the duration of the trip, Mark held the bag over the side of the boat, but out of the water. Isaac testified that Mark held the bag that way so he could get rid of the bag by releasing it overboard if they saw the police. At trial, the prosecutor asked Isaac about the communication on the return trip to St. Thomas.

Q: And what was the conversation you heard between Mr. Mark and Mr. Ells?

A: "Look out for the lights."
"Drive, drive fast."
"Lets get down in a hurry."

Q: And who was saying that?

A: Gelean Mark were telling him to look out. If Mark cannot see something, he would ask Uki, what that is, what that is over there. You know. It were lights.

. . .

> Q: And . . . what was Mr. Ells responding?
>
> A: "That ain't nothing."
> "That's not," you know, "law enforcement," or "blue stripe," whatever the law enforcement on the water is.

(Trial Tr. 170-71, Sept. 13, 2007.)

When Mark, Ells, and Isaac returned to St. Thomas, they met Fagan at a dock near Coki Point. Mark handed Fagan the black plastic bag he had received from Hodge. Thereafter, Mark and Isaac left in Isaac's rental car, which had been parked at Coki Point.

In addition to Isaac's testimony, the government introduced audio recordings of phone calls the agents intercepted through wiretaps. On the afternoon of June 7, 2005, during a phone call between Mark and Fagan, Mark stated:

> And it look like the same fuck around dude he fuck with you know what I mean. Cause is the same fuck Ookie telling me.

(Ex. 27B, 4:57 p.m., June 7, 2005.) Later that night, Ells called Fagan and told him:

> ELLS: I safe. Yeah, yeah. I safe, I safe.
>
> FAGAN: Alright.

(Ex. 30B, 8:59 p.m., June 7, 2005.) Two minutes later, Mark called Fagan and asked him:

> MARK: How much is it?
>
> FAGAN: Three.

MARK: Alright. . . .

. . .

FAGAN: Its now I want from you again. I want, ahm, Partner number.

MARK: For Century?

FAGAN: No, ahm, he tell me he just reach already, you know. I talking about, ahm. . . . Hello, you could hear me?

(Ex. No. 31B, 9:01 p.m., June 7, 2005.) Detective Mark Joseph of the Virgin Islands Police Department testified that he learned through the investigation that Ells was also known as "Century."

On July 27, 2005, the government intercepted four conversations between Mark and Ells. At 5:51 p.m., Mark and Ells discussed dropping off an unknown item with an unknown person, and Mark mentioned the name "Culture," which is a nickname for defendant Fagan. At 6:09 p.m., Mark asked Ells about Ells' "t'ing," and Ells responded that Mark could "walk with it." (Ex. No. 42, 6:09 p.m., July 27, 2005.) Mark and Ells discussed possibly meeting up. After 7:00 p.m., Ells gave Mark a phone number and Mark suggested that Ells come to Red Hook, indicating that they may need to pick up an unidentified man. Ells agrees to come to Red Hook and says he'll come in the "Power Play." At 8:15 p.m., Mark and Ells agree to "leave it for another day." (Ex. No. 52, 8:15 p.m., July 27, 2005.)

On July 28, 2005, Mark called Ells' mother and asked to speak to "Ookie." Mark asked Ells if he was still coming, and Ells responded in the affirmative.

Around mid-day on July 30, 2005, DEA Agent Michael Goldfinger filmed a video of Ells operating a boat in the American Yacht Harbor in Red Hook, St. Thomas. The video showed that Ells parked the boat at a dock, where he was greeted by Mark and three other people. Ells, Mark, and three other individuals boarded the boat and left the harbor. Agent Goldfinger stated that he did not see Ells engage in any criminal conduct in the video. At 5:25 p.m., on July 30, 2005, Mark spoke to an unidentified man on the telephone and asked, "Ookie turn off already?" The man responded in the negative. Mark told the man to tell Ookie that he could "turn off." (Ex. No. 54, 5:25 p.m., July 27, 2005.)

At 8:44 p.m., on August 1, 2005, Mark told Ells "you could turn off." (Ex. No. 55, 8:44 p.m., Aug. 1, 2005.) Then Mark said "don't turn off yet." (*Id.*). Ten minutes later, Mark told Ells, "you could turn off." (Ex. No. 56, 8:55 p.m., Aug. 1, 2005.)

Ells concedes that the evidence presented at trial was sufficient for a rational jury to find that he was involved in a conspiracy to transport some form of contraband. He argues, however, that the government failed to show that he knew that the

purpose of the agreement was the specific unlawful purposes alleged in the indictment: possession with intent to distribute a controlled substance and importation of a controlled substance.

It is well-settled that "even in situations where the defendant knew that he was engaged in illicit activity, and knew that 'some form of contraband' was involved in the scheme in which he was participating, the government is obliged to prove beyond a reasonable doubt that the defendant had knowledge of the particular illegal objective contemplated by the conspiracy." *Idowu,* 157 F.3d at 266-67). Knowledge of the object of a conspiracy may be established from inferences based on circumstantial evidence, a conspiracy conviction may not be sustained by "inference as to the defendant's knowledge based upon speculation." *Cartwright*, 359 F.3d at 287-88.

Here, the Court must make every inference in favor of the government. A rational jury could infer from Isaac's identification of Ells as a member of the conspiracy, his description of Ells' role as "boat handler," and Ells' participation in the May, 2005, shipment, that he knowingly agreed to participate in a conspiracy to possess with intent to distribute and to import a controlled substance. This is especially true given the evidence of Ells' efforts to avoid detection in the boat on the way back to St. Thomas; his actions

as a lookout during the trip; and his presence in the boat while Mark held the black trash bag so that it could be easily discarded over the edge of the vessel. A rational juror could also infer that Ells had a prior relationship with Isaac, and that he associated with Mark, and, to a lesser degree, with Fagan, after May, 2005. The wiretapped conversations could support the inference that Ells transported shipments for Mark on one or two occasions after May, 2005. Based on the evidence adduced at trial, a rational jury could infer that Ells knowingly joined in the conspiracies charged in Counts One and Two of the indictment and had knowledge of the object of those conspiracies. *See, e.g., United States v. Bobb,* 471 F.3d 491 (3d Cir. 2006) (holding that evidence was sufficient to support a conspiracy to distribute controlled substances where the government presented testimony of co-conspirators, along with evidence of drug purchases from the defendant, and distribution by the defendant to others for future sale); *see also United States v. Greenidge,* 495 F.3d 85, 101 (3d Cir. 2007) (holding that evidence was sufficient to sustain a conviction for conspiracy to engage in monetary transaction involving proceeds of criminally derived property based on the testimony of a co-conspirator and evidence that, on the day the defendant deposited a stolen check, he called the bank several times to see if it had cleared).

B. Swan

In relation to Swan, the government offered the testimony of Elton Turnbull ("Turnbull"), a cooperating witness and alleged co-conspirator. Turnbull positively identified Swan, explaining that he had known Swan for a long time, as the two played little league together. He stated that Swan was also known by the nicknames "Warhead," and "Ses." Turnbull indicated that Swan had been involved with Mark from 1999 through 2002. Turnbull stated that Mark had informed him of the nature of Swan's involvement.

> A: [Mark] said Warhead has a route[4] that goes through St. Croix, and it basically goes through Baltimore, I think it was, and the New York area.
>
> Q: Two areas?
> A: I'm not sure if the flight went – I'm not exactly sure where the flight went to and connected to, but Baltimore was the primary area, primary area.

(Trial Tr. 302, Sept. 7, 2007.)

Additionally, portions of Isaac's trial testimony related to Swan. Isaac has known Swan for approximately seventeen years, and identified Swan as a member of the drug trafficking organization alleged in the indictment. He listed Swan as one of four members of the organization who lived in St. Thomas in 1999. Isaac stated that Swan had a route transporting drugs from St.

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[4] Turnbull explained that a route "is a way of moving narcotics to the United States." (Trial Tr. 302, Sept. 7, 2007.)

Croix to New York. Isaac explained that the organization used Swan's St. Croix-New York route as an alternate route when they ceased trafficking directly to Raleigh, North Carolina, after Turnbull was arrested. Isaac also stated that Swan's role in the conspiracy was to distribute drugs in New York.

In June, 2003, Isaac was in North Carolina when he received a telephone call from Mark.

> [ISAAC]: [Mark] told me that he give Dorian Swan a half a key of cocaine to give to me in New York.

(Trial Tr. 83, Sept. 11, 2007.) Thereafter, Isaac rented a car and drove to Bronx, New York, with his cousin. Isaac called Swan when he arrived in New York. As Isaac explained,

> I communicate[d] with Dorian Swan, where I need[ed] to meet him to get a half a key of cocaine.

(*Id.* at 86.) Isaac traveled to the Bronx, where he met Swan and another individual, who were sitting in a black BMW. Isaac stated at trial that he approached the car, the window rolled down,

> [a]nd Dorian Swan told me that that's the bag for me.
>
> [THE PROSECUTOR]: [D]id he say anything else to you?
>
> A: No. I just reach[ed] in and collect[ed] the bag, and head[ed] back to North Carolina.
>
> Q: Once you got back to North Carolina, what, if anything, did you do with the package?
>
> A: I sold it.

(*Id.* at 88.)

In July, 2003, Isaac received another telephone call from Mark. As Isaac testified,

> Gelean Mark told me that he's sending four kilograms of cocaine through Dorian Swan's shipment to New York. And I was supposed to go there and pick up four keys.

(*Id.* at 89.) Again, Isaac rented a car and drove to New York with his cousin. Isaac met Swan at the same location in the Bronx, and obtained the bag out of the car in the same manner as he did in June, 2003. However, when Isaac returned to North Carolina, he discovered that the bag contained only two kilograms of cocaine. Isaac called Mark to inform him that the package was two kilograms short, and Mark responded that he would call Swan to "find out what's going on." (*Id.* at 91.) Isaac sold the two kilograms of cocaine and sent the profits (minus his own share) to Mark.

Finally, the government introduced a document that Isaac said was a list of the names and phone numbers of the members of his drug trafficking organization. Isaac stated that he had transcribed the list from his cellular phone. The document listed "WH," which, according to Isaac, stood for Warhead. The names of other coconspirators also appeared on the document.

The evidence presented at trial could support the logical inference that Swan agreed to deliver cocaine to Isaac on behalf of Mark on at least two occasions. The evidence that Swan transported cocaine as part of a trade between Mark and Isaac shows that Swan was part of a larger organization and not a mere seller of cocaine to Isaac. The fact that Swan personally transported the cocaine from the Virgin Islands to New York and indicated affirmatively that the bag containing cocaine was specifically intended for Isaac also suggests that Swan had some knowledge of the bag's contents. The above evidence is sufficient to support the logical inference that Swan agreed to possess with the intent to distribute a controlled substance.

Even assuming that the government has proven that Swan conspired to possess with intent to distribute a controlled substance, Swan argues that the evidence adduced at trial shows Swan participated in a conspiracy to possess with intent to distribute drugs in New York, not in North Carolina, as charged in the indictment. "Where a single conspiracy is alleged in the indictment, there is a variance if the evidence at trial proves only the existence of multiple conspiracies." *United States v. Bobb,* 471 F.3d 491, 494 (2006). "[A] single conspiracy exists if there is one overall agreement among the parties to carry out those objectives." *Id.* at 494-95. The government may show a

single conspiracy by "evidence of a large general scheme, and of aid given by some conspirators to others in aid of that scheme." *United States v. Reyes*, 930 F.2d 310, 312-13 (3d Cir. 1991). While the government "need not prove that each defendant knew all the details, goals or other participants," it must show that the defendant "knew that he was part of a larger drug operation." *United States v. Quintero,* 38 F.3d 1317, 1337 (3d Cir. 1994).

Here, Isaac's testimony that the organization used Swan's St. Croix-New York route out of necessity after shutting down Turnbull's route supports the inference that Swan was working in conjunction with, not independently of, the drug trafficking organization alleged in the indictment. It is reasonable to conclude that Swan knew he was part of a larger organization based on the fact that he transported drugs on behalf of Mark for delivery to Isaac. A rational jury believing the government's evidence could find beyond a reasonable doubt that Swan agreed to transport cocaine to New York as part of the conspiracy alleged in Count One of the indictment. *See, e.g., Salmon,* 944 F.2d 1106 (holding that a reasonable jury could find the existence of a single conspiracy beyond a reasonable doubt).

C. Moses

During the trial, Isaac identified Moses as one of the members of the drug trafficking organization who lived in St.

Thomas in 1999. Isaac identified Moses as a courier for the organization and stated at trial that "he was selling drugs in St. Thomas, too." (Trial Tr. 252, Sept. 13, 2007.)

In July, 2003, Isaac made a weekend trip to St. Thomas, where he again visited with Mark, Moses, and Freeman. Isaac stated that the men talked about "drugs, dogs, cock fighting, so forth." (Trial Tr. 93, Sept. 11, 2007.)

In November, 2003, Isaac, Mark, Moses, and Freeman re-established a drug trafficking route from St. Thomas to North Carolina. The new route went through Charlotte, North Carolina, replacing the route from St. Thomas to Raleigh, North Carolina, that was abandoned after Turnbull's arrest.

In September, 2005, Mark called Isaac and told him he would be sending a shipment of drugs and a fighting dog. Moses flew from St. Thomas to Charlotte, North Carolina, with the drugs and the dog. At the direction of Isaac, Mia Moore ("Moore") and Freeman picked up Moses and the dog from the airport. Later that night, Isaac met Moses and Moses gave Isaac a bag containing ten kilograms of cocaine. Isaac paid Moses $5,000 as compensation for transporting the drugs. Thereafter, Isaac sold the ten kilograms of cocaine he received from Moses. At trial, the prosecutor asked Isaac:

> Q: Who, if anyone, assisted you in the sale of those ten keys?
>
> A: The day we was traveling with the dog, I took five kilograms with me and Kelvin Moses to Toriano Cave ("Cave"), who is a member of the organization.
>
> Q: What did you do with the other five?
>
> A: Me and Everette sold it. Everette Mills.

(*Id.* at 188.) Isaac took his share of the profit and sent the rest of the proceeds to Mark and Freeman in the Virgin Islands with a courier named Valencia Roberts ("Roberts").

In October, 2005, Isaac informed Mark that he wanted to start purchasing cocaine with his own money instead of getting the drugs "fronted." After receiving the okay from Mark, Isaac sent Roberts to St. Thomas with $60,000 to purchase six kilograms of cocaine from Mark. Isaac asked Moses to pick up Roberts at the airport in St. Thomas, and to give the $60,000 to Mark.

The government also offered an audio recording of a telephone call between Moses and Isaac, which Isaac recorded himself in 2006. In the conversation, Moses told Isaac that Isaac should try to resolve a drug-related dispute with Freeman. Moses mentioned not getting Mark in trouble. The prosecutor asked Isaac:

> Q: When Mr. Moses is talking on the phone and not wanting to talk on the phone, . . . what is your understanding as to why he was saying that?

> A: He don't know what – he don't want us to be arguing over the, over the phone, in case DEA got, got the phones on wiretap, about our discussion over the dispute of the drugs.

(*Id*. at 280.) Additionally, the name "Kelvin" appeared on Isaac's list of phone numbers of his co-conspirators.

Alexis Wright ("Wright") testified at trial that she flew to St. Thomas on behalf of Isaac in September, 2005, as a courier carrying money. Wright identified Moses as the individual who picked her up from the airport and took her to have lunch with Mark. The next day, Moses gave Wright $1,000 cash.

Roberts also identified Moses as the person who picked her up from the airport in St. Thomas in September, 2005. Roberts had traveled to St. Thomas at the direction of Isaac and had transported a green bag he had given her. Moses dropped off Roberts at her hotel room and left with the green bag. Hours later, Moses returned to the hotel room and gave Roberts the green bag, her clothes, and $1,000 cash. The next day, Moses took Roberts to the airport and she flew back to North Carolina.

The evidence adduced at trial shows ongoing participation by Moses in drug trafficking activities of Isaac and Mark. Moses' awareness of his participation in a larger organization and his knowledge of the organization's drug trafficking objectives are evidenced by the fact that he helped re-establish the organizations drug trafficking route from St. Thomas to North

Carolina after Turnbull's arrest in November, 2003. Additionally, by encouraging Isaac in 2006 to settle his dispute with Freeman for fear that the DEA would intercept their conversations, Moses demonstrated a level of mutual trust and concern for the well being of other members of the conspiracy. A rational jury granting every inference in favor of the government could find that Moses agreed to participate in the conspiracy alleged in Count One based on the testimony of Isaac, Wright, and Roberts, as well as the recorded telephone conversation between Moses and Isaac. *See, e.g., United States v. Price*, 13 F.3d 711, 731 (3d Cir. 1994) (finding that the evidence supported the inference that the defendant agreed to participate in a conspiracy where, a co-conspirator testified as to the defendant's involvement in the conspiracy, which was confirmed by a recorded conversation, and other evidence).

IV. CONCLUSION

Based on the foregoing, the Court will deny the motions of Ells, Swan and Moses for judgments of acquittal. An appropriate judgment follows.

Dated: January 20, 2007 **S_____**

CURTIS V. GÓMEZ
Chief Judge

Copy:

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UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
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v.	)	
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VERNON FAGAN,	)	
WALTER ELLS,	)	
DORIAN SWAN,	)	
KELVIN MOSES, and	)	
HENRY FREEMAN,	)	
	)	
Defendants.	)	
_____	)	

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For defendant Henry Freeman.

JUDGMENT

GÓMEZ, C.J.

Before the Court are the motions of defendants Walter Ells ("Ells"), Dorian Swan ("Swan"), and Kelvin Moses ("Moses") for judgments of acquittal pursuant to Federal Rule of Criminal Procedure 29 ("Rule 29"). For the reasons stated in the accompanying memorandum of even date, it is hereby

ORDERED that the motions of Ells, Swan, and Moses for judgments of acquittal are **DENIED**.

Dated: January 20, 2007 **S_____**
CURTIS V. GÓMEZ
Chief Judge

Copy:

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	)	
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_____	)	

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For defendant Kelvin Moses,

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For defendant Henry Freeman.

JUDGMENT

GÓMEZ, C.J.

Before the Court are the motions of defendants Walter Ells ("Ells"), Dorian Swan ("Swan"), and Kelvin Moses ("Moses") for judgments of acquittal pursuant to Federal Rule of Criminal Procedure 29 ("Rule 29"). For the reasons stated in the accompanying memorandum of even date, it is hereby

ORDERED that the motions of Ells, Swan, and Moses for judgments of acquittal are **DENIED**.

Dated: January 20, 2007 **S_____**
CURTIS V. GÓMEZ
Chief Judge

Copy:

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